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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,977	01/29/2002	Akira Nishina	43409	2411

1609 7590 03/25/2005

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WASHINGTON, DC 20036

EXAMINER

CROSS, LATOYA I

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/057,977

Applicant(s)

NISHINA ET AL

Examiner

LaToya I. Cross

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Oath/Declaration***

1. Receipt is acknowledged of papers filed under 35 U.S.C. 119 (a)-(d) based on an application filed in Japan on February 15, 2001. Applicant has not complied with the requirements of 37 CFR 1.63(c), since the oath, declaration or application data sheet does not acknowledge the filing of any foreign application. A new oath, declaration or application data sheet is required in the body of which the present application should be identified by application number and filing date.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 7-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claims 7-10 are directed to a method for analyzing samples from a plurality of sampling

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points. Method claims are defined by active method steps that would convey to one of ordinary skill in the art how to conduct/perform the method. Claims 7-10 merely recite Applicants' concept and they fail to recite any active method steps which define how the analyze samples. Claims 7-10 should be amended to incorporate the method steps involved in analyzing samples. Applicants should make sure that any amended are fully supported by the original specification.

*Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2 and 4 rejected under 35 U.S.C. 102(b) as being anticipated by US patent 5,087,423 to Ishibashi.

Ishibashi teaches an automatic analyzer apparatus having a plurality of analyzing Modules (1, 2). Sample cups to be analyzed are supplied from sampler (4). The sample cups move to a first sample cup distributor (5) via route (3). The samples cups are distributed either to first analyzer route (6) or bypass route (7). The sample cups that are passed to analyzer route (7) are routed to first analyzer (1). Sample cups are passed to bypass route (7) are moved to a second sample cup distributor (8). The second distributor determines whether the sample cup is routed to second analyzer (2) via second analyzing route (9) or to second bypass route (10), which leads to sample cup receiver (13). The bypass route (7) is considered to be equivalent to Applicants' claimed substitute analysis route at sending end. The bypass route (10) is considered to be equivalent to Applicants' claimed substitute analysis route at receiving

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end. The sample cup distributors (5, 8, 11) are valves in that they regulate the flow of sample cups throughout the analyzer system.

7. Claims 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent 4,855,110 to Marker et al.

Marker et al teach a plurality of clinical analyzers (15) connected to a central computer (20). The analyzers (15) are responsible for carrying out various tests on samples. Each analyzer may be responsible for carrying out testing for a particular substance or each analyzers may be capable of performing multiple tests for different substances (col. 5, lines 43-53). Marker et al teach the additional use of back-up analyzers (26, 28). In the event that one of the main analyzers (15) goes down for repair or other reason, computer (20) activates backup analyzers (26, 28) to perform the operations for the down analyzer (col. 3, lines 47-50; col. 5, lines 58-61).

### *Claim Rejections - 35 USC § 103*

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 3, 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishibashi in view of Marker et al.

Ishibashi discloses an automatic analyzer apparatus having a plurality of analyzing Modules (1, 2). Sample cups to be analyzed are supplied from sampler (4). The sample cups move to a first sample cup distributor (5) via route (3). The sample cups are distributed either to first analyzer route (6) or bypass route/substitute route (7). The sample cups that are passed to analyzer route (7) are routed to first analyzer (1). Sample cups are passed to bypass route (7) are moved to a second sample cup distributor (8). The second distributor determines whether the sample cup is routed to second analyzer (2) via second analyzing route (9) or to second bypass route/substitute route (10), which leads to sample cup receiver (13).

With respect to claims 5 and 6, Ishibashi fails to teach a common analyzer, capable of performing the functions of all the main analyzers, to be used in the event that one of the main analyzers fails.

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Marker et al teach a plurality of clinical analyzers (15) connected to a central computer (20). The analyzers (15) are responsible for carrying out various tests on samples. Each analyzer may be responsible for carrying out testing for a particular substance or each analyzers may be capable of performing multiple tests for different substances (col. 5, lines 43-53). Marker et al teach the additional use of back-up analyzers (26, 28). In the event that one of the main analyzers (15) goes down for repair or other reason, computer (20) activates backup analyzers (26, 28) to perform the operations for the down analyzer (col. 3, lines 47-50; col. 5, lines 58-61).

It would have been obvious to one of ordinary skill in the art to incorporate an analyzer capable of performing all the functions of the main analyzers into the system of Ishibashi. As suggested by Marker et al, when one analyzer fails, the computer would be able to route the samples to the common analyzer. Such would allow the system to continue to operate at its full capacity.

With respect to claim 3, Ishibashi fails to teach a shut-off valve to shield the substitute analysis route. A shut-off valve would have been obvious to one of ordinary skill in the art to make sure that the substitute analyzer does not remain on-line permanently and is only used when needed.

#### *Citation of Relevant Prior Art*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US patent 5,623,415 to O'Bryan et al teach an automated analyzer having multiple test stations and having two lanes for routing sample containers throughout the system. Diverters

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(14, 18, 22, 26, etc.) are capable of switching the sample containers between lanes depending on 1) whether a particular test needs to be performed or 2) whether the sample container is defective and cannot be accurately processed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 571-272-1256. The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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